

REGISTER



South Dakota Legislative Research Council

Volume 37

Monday, 8:00 a.m., October 18, 2010

NOTICES OF PROPOSED RULES: (The date in parentheses is the date the rules were filed in the Legislative Research Council.)

Department of Social Services: Medical Programs: (October 12, 2010) intends to amend ICF-MR/DD rules to amend definitions; update utilization review provisions; clarify that payment will not be allowed for reserved bed days; remove obsolete ICAP and on-site review requirements; and remove unnecessary and duplicative claim requirements. The general authority for these rules, as cited by the department, is SDCL 28-6-1.

A public hearing will be held in DSS Conference Room #1, Kneip Office Building, 700 Governors Drive, Pierre, South Dakota, on November 2, 2010, at 9:00 a.m. Copies of the proposed rules may be obtained from and written comments sent to Laura Ringling, Administrative Rules, Department of Social Services, 700 Governors Drive, Pierre, South Dakota 57501. Ms. Ringling may be contacted by telephone at (605) 773-3165. Written comments must be received by November 12, 2010, to be considered. Individuals intending to present oral testimony at the hearing must make a written copy of their testimony available to the department at the time of the hearing. The testimony must relate directly to the changes being proposed and must cite the specific rule number to which the comments are being directed. This hearing is being held in a physically accessible place. Persons who have special needs for which the department can make arrangements are asked to call (605) 773-3165 at least 48 hours before the hearing.

Department of Game, Fish and Parks: (October 15, 2010) intends to amend a Park Licenses rule to eliminate the Custer State Park "per person" temporary park entrance license and extend the Custer State Park temporary motorcycle park entrance license valid during the Sturgis Motorcycle Rally into a year round license; amend Camping Permits and Rules to increase the daily camping fee in all state park area campgrounds by \$2; increase park lodge fees by \$25; increase the fee to reserve a group picnic shelter from \$9 to \$20; and change the campground designation at West Bend and Randall Creek from modern to preferred based on campground occupancy rates; amend General Provisions (Fishing Seasons and Methods) rules to update the definition of the "Black Hills Trout Management Area;" add a nonresident youth fishing license and game fish spearing and archery certification permit and establish the fee for each; standardize ice fishing shelter removal dates statewide by aligning the date with the end of the spearing season; and authorize liberalized taking of lake herring along with smelt in the Missouri River and its impoundments and transfer this rule from the chapter on fish limits to the general provisions chapter; amend Fish Limits rules to standardize panfish limits statewide; change daily and possession limits for yellow perch on South Dakota-Minnesota boundary waters to be consistent with South Dakota inland water changes and Minnesota border water regulations; and transfer the rule authorizing liberalized take of smelt from the fish limits rule to the general provisions rule and remove the rule which establishes special management waters for panfish; amend Spearing rules to change spearing dates for rough fish to allow spearing year round; change spearing dates for

rough fish in South Dakota-Minnesota boundary waters to any time of the day or night from May 1 to the last Sunday in February, inclusive; and repeal the special rule pertaining to spearing of rough fish in certain northeastern South Dakota counties; amend a Hoop Nets and Setlines rule to remove toads as authorized bait for setlines and make leopard frogs the only authorized species of frogs that may be used as bait on tagged setlines; amend Bait rules to change the expiration date for bait dealer licenses to January 31 of the calendar year directly following the year for which the license was issued; add Interstate Lake to the list of waters closed to commercial taking of bait; and establish the physical location where bait dealers are required to keep their bait records available for inspection by department personnel; and amend Private Fish Hatcheries rules to add language giving the department flexibility to exempt newly created waters under private fish hatchery licenses from payment of the one-time inspection fee; change the expiration date for private hatchery licenses to January 31 of the calendar year directly following the year for which the license was issued; establish the physical location where private hatchery licenses are required to keep their hatchery records available for inspection by department personnel; and add rule language which specifies when payments are due for fish health inspections. The general authority for these rules, as cited by the department, is SDCL 41-2-18, 41-6-10, 41-6-37.1, 41-12-3, 41-17-1.1, 41-17-13, and 41-17-13.4.

A public hearing will be held at the Ramkota RiverCentre Convention Center, 902 W. Sioux Avenue, Pierre, South Dakota, on November 4, 2010, at 2:00 p.m. (CDT). Copies of the proposed rules may be obtained from and written comments sent to Jeffrey R. Vonk, Secretary, Foss Building, 523 East Capitol Avenue, Pierre, South Dakota 57501. Written comments must be received by and in the office of the Secretary of the Department of Game, Fish and Parks on or before 12:00 p.m. three (3) days prior to the date of the hearing to be

included within the record of the public hearing and to be considered by the Commission. Comments may also be sent by email to chuck.schlueter@state.sd.us. All written and email comments must include the commenter's name and address. This hearing is being held in a physically accessible place. Persons who have special needs for which the department can make arrangements are asked to call (605) 773-3387 before the hearing.

FILINGS IN THE SECRETARY OF STATE'S OFFICE:

Executive Appointments:

Lisa M. Rave, Baltic, was appointed on October 7, 2010, to the **State Board of Pharmacy**, to replace Stephen Statz, effective October 6, 2010, and shall continue until October 1, 2013.

Jeff L. Nielsen, Sioux Falls, was reappointed on October 8, 2010, to the **State Board of Pharmacy**, effective immediately and shall continue until October 1, 2013.

Daryl (KC) Russell, Aberdeen, was appointed on October 8, 2010, to the **Hagen-Harvey Memorial Scholarship Board**, to replace Scott German, effective October 8, 2010, and shall continue until July 1, 2015.

Executive Orders:

The Governor has signed **Executive Order 2010-37** dated October 8, 2010. This order rescinds the prohibition of recreational use of the Big Sioux River, Pipestone Creek, Split Rock Creek, and Skunk Creek established in Executive Order 2010-36.

The Governor has signed **Executive Order 2010-38** dated October 12, 2010. The Governor has waived the requirements of SDCL 49-28A-3 and 49 CFR Part 395 of the U.S. Department of Transportation Motor Carrier Safety Regulations because an emergency exists due to

the extremely low inventory of petroleum products. The transportation and delivery of gasoline, diesel, and propane into or within South Dakota shall be exempt from the federal hours of service regulations. This order will expire upon the conclusion of the emergency or no later than midnight, October 31, 2010.

Note: A copy of the rules may be obtained directly from the above agencies. Write to the agency at the address given under "Notices of Proposed Rules." There is no

charge for proposed rules. The following agencies have permission from the Interim Rules Review Committee to charge for adopted rules: the Division of Insurance, the Cosmetology Commission, the State Board of Examiners in Optometry, the State Plumbing Commission, the Board of Nursing, the Department of Social Services, the State Electrical Commission, the South Dakota Board of Pharmacy, the Real Estate Commission, the Gaming Commission, the Department of Revenue and Regulation, and the Department of Labor for Article 47:03.

REMINDER OF HEARINGS SCHEDULED

10-21-2010	Revenue and Regulation: Division of Securities	Amend Broker-Dealer and Agent rules to change the use of NASD to FINRA due to the merger of these two organization; clarify the series 63 examination lapse of registration; provide for any SEC required fiduciary standards; add senior specific professional designations; and exempt certain business brokers from broker-dealer registration; amend Registration Requirements and Procedures rules to clarify existing rules and exempt certain advertising in public offerings prior to complete registration; amend Investment Adviser rules to repeal all existing rules and replace those with model rules that coordinate with the Uniform Securities Act of 2002 and include the new SEC ADV format; and provide for an exemption to registration for certain investments advisers; and amend Notice Filings for Covered Securities and Registration Exemptions rules to clarify how to calculate the number of purchasers under ARSD 47-31B-202(14) and the use of this same exemption by out of state issuers; and define "isolated non-issuer."; 37 SDR 63.
10-22-2010	Health: Board of Dentistry	Amend rules to change from regulating by the modality of the delivery of the sedative or anesthetic to regulating based on the level of sedation; define four levels of sedation – minimal, moderate, deep, and general anesthesia; and require dentists who are not specialists to disclaim as much if they advertise services in a recognized specialty area and places certain requirements on advertising in non-recognized specialty areas; 37 SDR 57.

10-25-2010	Revenue and Regulation: Division of Insurance	Amend rules to set forth minimum loss ratios for health insurance and to establish a refund formula; 37 SDR 67.
10-25-2010	Revenue and Regulation: Division of Insurance	Amend rules to prohibit insurers from discouraging applications for health insurance during open enrollment, revise the standards for internal appeals of health insurance claim determinations, establish standards for the coverage of preventive services in health insurance, require the extension of health insurance coverage for children who have not reached the age of 26, require access to certain health care specialists in health insurance, set standards for health insurance compensation with respect to emergency care, restrict the ability of health insurers to rescind coverage, prohibit the application of annual and lifetime limits in health insurance policies in certain situations, and provide for open enrollment in health insurance for those that have not reached the age of 19; 37 SDR 67.
10-25-2010	Human Services: Division of Rehabilitation Services	Amend Interpreters for the Deaf rules to add a complaint process against a certified interpreter, provide for notice to the interpreter of the complaint, add an investigation process and timeline; will require any interpreter registering with the Division to adhere to the Code of Professional Conduct as adopted by the Registry of Interpreters for the Deaf; allows an interpreter with an EIPA assessment score of 3.5 or higher who has failed to register within 12 months of the renewal date to register under the initial registration process providing they submit the continuing education as required under the annual registration process; combines initial registration for nationally certified interpreters and the interpreters registering with the EIPA assessment score under one rule; combines annual registration for the currently certified South Dakota certified interpreter, an interpreter registering with an EIPA assessment score and a nationally certified interpreter under one rule; changes the due date of annual registration to August 31 of each year for all interpreters; changes the continuing education contact hours to 80 hours in a four year maintenance cycle for South

		Dakota certified interpreters or an interpreter registering with an EIPA assessment score; provides for a modified first time cycle for an interpreter registering with an EIPA assessment score and starts all of the currently certified South Dakota interpreter cycles to begin on September 1, 2011; allows for an extension of continuing education maintenance under certain circumstances; amend Cochlear Implants rules to amend the eligibility requirements for funding of cochlear implants by the Division of Rehabilitation Services by removing the current requirement that the applicant must be five years old or if less than 21 have one implant before the age of five or a documented progressive hearing loss that led to deafness after speech and language were developed and by changing the requirement to the applicant be less than 21 years of age at the time of application; amends the application process to reflect that the requirement for deafness after speech and language development is no longer required; and amends the definition of an applicant to reflect the age change to less than 21 years of age; 37 SDR 68.
10-27-2010	Revenue and Regulation: Lottery Commission	Amend rules to adopt the latest amended game rules of the Multi-State Lottery Association for the Mega Millions Game, including the Megaplier Special Promotion Game rules, and the Powerball Game, including the Power Play rules, as the rules of the South Dakota Lottery for the games; 37 SDR 68.
10-28-2010	Agriculture: SD Value Added Finance Authority	Amend rules to increase the bond amount for the Beginning Farmer Bond Program to purchase agricultural land and make minor changes to the qualification of the program; 37 SDR 75.
11-2-2010	Social Services: Medical Programs	Amend ICF-MR/DD rules to amend definitions; update utilization review provisions; clarify that payment will not be allowed for reserved bed days; remove obsolete ICAP and on-site review requirements; and remove unnecessary and duplicative claim requirements; 37 SDR 81.
11-4-2010	Game, Fish and Parks	Amend a Park Licenses rule to eliminate the Custer State Park "per person" temporary park entrance license and extend the Custer State

		<p>Park temporary motorcycle park entrance license valid during the Sturgis Motorcycle Rally into a year round license; amend Camping Permits and Rules to increase the daily camping fee in all state park area campgrounds by \$2; increase park lodge fees by \$25; increase the fee to reserve a group picnic shelter from \$9 to \$20; and change the campground designation at West Bend and Randall Creek from modern to preferred based on campground occupancy rates; amend General Provisions (Fishing Seasons and Methods) rules to update the definition of the "Black Hills Trout Management Area;" add a nonresident youth fishing license and game fish spearing and archery certification permit and establish the fee for each; standardize ice fishing shelter removal dates statewide by aligning the date with the end of the spearing season; and authorize liberalized taking of lake herring along with smelt in the Missouri River and its impoundments and transfer this rule from the chapter on fish limits to the general provisions chapter; amend Fish Limits rules to standardize panfish limits statewide; change daily and possession limits for yellow perch on South Dakota-Minnesota boundary waters to be consistent with South Dakota inland water changes and Minnesota border water regulations; and transfer the rule authorizing liberalized take of smelt from the fish limits rule to the general provisions rule and remove the rule which establishes special management waters for panfish; amend Spearing rules to change spearing dates for rough fish to allow spearing year round; change spearing dates for rough fish in South Dakota-Minnesota boundary waters to any time of the day or night from May 1 to the last Sunday in February, inclusive; and repeal the special rule pertaining to spearing of rough fish in certain northeastern South Dakota counties; amend a Hoop Nets and Setlines rule to remove toads as authorized bait for setlines and make leopard frogs the only authorized species of frogs that may be used as bait on tagged setlines; amend Bait rules to change the expiration date for bait dealer licenses to January 31 of the calendar</p>
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		year directly following the year for which the license was issued; add Interstate Lake to the list of waters closed to commercial taking of bait; and establish the physical location where bait dealers are required to keep their bait records available for inspection by department personnel; and amend Private Fish Hatcheries rules to add language giving the department flexibility to exempt newly created waters under private fish hatchery licenses from payment of the one-time inspection fee; change the expiration date for private hatchery licenses to January 31 of the calendar year directly following the year for which the license was issued; establish the physical location where private hatchery licenses are required to keep their hatchery records available for inspection by department personnel; and add rule language which specifies when payments are due for fish health inspections; 37 SDR 81.
11-17-2010	Attorney General: Law Enforcement Officers Standards and Training Commission	Adopt rules to establish a county coroner training program; 37 SDR 67.

RULES REVIEW COMMITTEE MEETINGS

The next meeting of the Interim Rules Review Committee will be held Wednesday, November 17, 2010, in Room 414, Fourth Floor, of the State Capitol. The committee chair has set the following tentative meeting schedule for the 2010 interim: December 20.

Note: An updated version of the Administrative Rules Guide to Form and Style is available on the Legislative Web site at <http://legis.state.sd.us/rules/index.aspx>.

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